Indonesian Journal of Advanced Research (IJAR)
Vol. 4, No. 6, 2025: 601-610

The Use of Arbitration Mechanisms to Resolve Business Disputes Outside the Formal Justice System

Dede Hendratno Djuanda[1], Suwandi Hartono[2], Miftah Aziz[3*], Harmono[4], Dadan Taufik Fathurohman[5]
Swadaya Gunung Jati University
Corresponding Author: Miftah Aziz, miftahazizbinruslani@gmail.com

A R T I C L E I N F O

Keywords: Arbitration, Business Dispute, Settlement.

Received : 30, April
Revised : 14, May
Accepted : 16, June

A B S T R A C T

This study evaluates the effectiveness of arbitration in resolving business disputes compared to formal judicial channels, and analyzes the legal force of arbitral awards. In the competitive business world, conflicts often occur, and resolution through the courts is considered less efficient because it is time-consuming, high cost, and open to the public. Arbitration as a form of Alternative Dispute Resolution (ADR) offers a fast, flexible, closed process, and a binding award. In Indonesia, this mechanism is regulated in Law No. 30 of 1999 and is implemented by institutions such as BANI and Basyarnas. A normative juridical research method was used. Challenges still exist, such as lack of understanding and execution of court-dependent decisions.

DOI prefix: https://doi.org/10.55927/ijar.v4i6.14591
ISSN-E: 2986-0768
https://journal.formosapublisher.org/index.php/ijar

INTRODUCTION

Indonesia is a country governed by the rule of law, which means that all actions taken by the community and the government are based on legal rules. This is in accordance with the concept of the rule of law as contained in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country governed by the rule of law. (1945 Constitution of the Republic of Indonesia). In practice, business activities are increasingly complex and often lead to conflicts due to differences in interpreting contract terms, failure to fulfill obligations (breach of contract), or violations of rights and obligations. Until now, the most common method of dispute resolution has been through formal court proceedings. However, the court process is often perceived as time-consuming, costly, and open to the public, which can harm the reputation of business actors. Therefore, there is an increasing demand for faster, more adaptive, and confidential dispute resolution methods, especially in the modern business world that prioritizes efficiency and legal certainty.

One of the increasingly used alternative dispute resolution methods is arbitration as part of Alternative Dispute Resolution (ADR). Arbitration allows disputes to be resolved privately by a neutral arbitrator, with final and binding decisions. These methods are faster, more flexible, and cost-effective than involving the formal court system (Hamzani, 2014) in (Agustina, 2024)

There is also conciliation, which is similar to mediation, and conciliation typically involves a conciliator who is more proactive in providing advice and solutions to the disputing parties. Alternative Dispute Resolution (ADR) ADR is a general term that encompasses various methods of dispute resolution outside of court, including arbitration, mediation, and other forms. Online Dispute Resolution (ODR) ODR is a form of ADR that uses information and communication technology to resolve disputes online. This may involve virtual mediators and arbitrators (Supena, 2023).

Arbitration in Indonesia is implemented through arbitration institutions such as the Indonesian National Arbitration Board (BANI), which has been in existence since 1977 and handles hundreds of business disputes each year (Winarta, 2022). The arbitration process is regulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This provides legal certainty and a strong basis of legitimacy for business actors to choose out-of-court settlements.

In addition to BANI, there are other arbitration institutions such as the Indonesian Arbitration Institute (LA-Indonesia) and the Indonesian Arbitration and Mediation Institute (LAM-Indonesia). The benefits of resolving disputes outside formal courts include: time and cost efficiency, privacy and confidentiality, procedural flexibility, and legal certainty. However, the level of understanding among business actors regarding arbitration mechanisms remains relatively low. Many are still unaware of the procedures, benefits, and legal enforceability of arbitration awards. Therefore, it is important to conduct a more in-depth examination of the effectiveness of arbitration mechanisms in resolving business disputes compared to the formal court system, as well as how arbitration awards possess legally binding force in the process of resolving business disputes outside the court system.

LITERATURE REVIEW

Disputes

As cited by Rachmadi Usman, Siti Megadianty Adam and Takdir Rahmadi in (Wajdi et al., 2023) mentioned that in English, there are two terms related to differences in one English and relationships with two or more parties, namely conflict and dispute. Although both involve disagreement in some form, they differ in meaning. The term conflict has been borrowed into Indonesian as 'conflict', while we can translate dispute as dispute. Conflict is defined as a situation where two or more parties have incompatible interests. In other words, it is likely that disagreements arise in the process of a dispute arising. However, this difference of interest does not necessarily develop into a dispute as long as the aggrieved party does not express their dissatisfaction or objection openly, but keeps it to themselves. A conflict changes or develops into a dispute when the aggrieved party has expressed his dissatisfaction or concern directly to the party considered to be the cause of the loss (Usman, 2003: 1) in (Wajdi et al., 2023). In the Indonesian Dictionary the word Dispute means opposition or conflict. Conflict means the existence of opposition or opposition between people, groups, or organizations to one problem object. Opposition or conflict between individuals or groups that have a common relationship or interest in an object of ownership has legal consequences between each other (Winardi, 2007: 1) in (Wajdi et al., 2023).

Business

In the Big Indonesian Dictionary "business" is a commercial venture in the world of trade. The word business is taken from English, namely *business* (Jones & Lindawaty, 2007: 25) in (Wajdi et al., 2023). From this definition, it can be interpreted that business is an activity of procuring goods and services in an effort to meet the needs of the community in order to gain profit in order to improve their quality of life.

Business law is a regulation that is intended before any activity in doing business or trading activities. This business law is not only intended for business actors, but also for the public or consumers of the goods or services they consume (Fitrotin Jamilah, 2018).

Business Disputes

According to the Big Indonesian Dictionary (KBBI), a dispute is an opposition or conflict. Conflict means the existence of opposition, or opposition between groups or organizations to one problem object (Zaman, 2021). In a business context, disputes can arise from various sources, such as differences in contract interpretation, default, infringement of intellectual property rights, or share ownership disputes. Business disputes can be resolved through various mechanisms, including litigation in court, arbitration, mediation, or conciliation, depending on the agreement of the parties and the applicable legal provisions (Yamin, 2025).

Arbitrase

The term arbitration comes from the word *arbitrary* (Latin) which means "the power to settle a case according to discretion." The definition in terminology is put forward differently by scholars today even though it actually has the same meaning, including Subekti stating that arbitration is the settlement or termination of a dispute by a judge or judges based on an agreement that the parties will submit to or obey the decision given by the judge they choose (Subekti, 1992) in (Gusri Putra Dodi, 2022).

METHODOLOGY

This research applies a normative juridical approach, with a focus on analyzing the regulations and legal principles governing the arbitration mechanism as an alternative form of dispute resolution in Indonesia. This study is based on secondary data in the form of literature, which is used to evaluate legal doctrines, legal norms, and regulations relating to arbitration at various levels, in order to gain an in-depth understanding of the concept of arbitration within the framework of an effective legal system. This approach plays an important role in the development of legal theory and practice. By examining its characteristics, stages, advantages, and disadvantages, this research is expected to be implemented more optimally and make a real contribution to society.

RESEARCH RESULTS AND DISCUSSION

Arbitration Mechanism in Resolving Business Disputes Compared to the Formal Justice System

Arbitration and the formal justice system are two different approaches to resolving business disputes, each with its own advantages and limitations. Arbitration is known for its relatively fast, flexible, and confidential process, and produces a final and binding award. In contrast, the formal justice system tends to be open, follows rigid legal procedures, and provides room for further legal remedies such as appeals and cassations.

The formal justice system in Indonesia serves as the main mechanism for upholding the law and maintaining justice in society. This process involves official institutions such as courts, prosecutors and lawyers, who work under strict legal procedures to examine, hear and decide cases. Historically, Indonesia's legal system has relied on litigation as the primary means of dispute resolution. However, with the increasing complexity and number of cases, this system began to be considered less efficient for business actors who needed faster and more practical solutions. In this context, arbitration emerges as an alternative that offers advantages in terms of flexibility, time efficiency and protection of sensitive information.

Disputes can be resolved through two main channels: litigation through the courts, or non-litigation settlement outside the courts. Litigation tends to be confrontational and often fails to meet the interests of both parties, and has disadvantages such as slow processing, high costs, and the potential to damage relationships between disputants. Meanwhile, non-litigation settlements, such as through arbitration, offer solutions that prioritize mutual agreement, maintain confidentiality, avoid convoluted procedures, and seek to maintain good relations between parties. However, in some countries, the litigation process can be faster depending on the judicial system. The main advantage of non-litigation settlement remains its confidentiality, as neither the process nor the outcome is widely publicized. This kind of settlement mechanism is known as Alternative Dispute Resolution (ADR).

In the ever-growing and competitive business world, conflicts and disputes are almost inevitable. This can arise from various factors such as differences in contract interpretation, default, and breach of agreement. Therefore, a dispute resolution system is needed that can provide justice efficiently, quickly, and maintain the continuity of business relations between the parties.

In Indonesia, arbitration has been widely applied especially in complex business disputes involving foreign parties. Arbitration is seen as a neutral route as it allows parties to appoint arbitrators with expertise in the subject matter, without being bound by any particular national law. Some of the most prominent arbitration cases in Indonesia come from strategic sectors such as energy, infrastructure and mining. Many businesses recognize that arbitration settlement helps speed up the process without disrupting the company's operational activities.

However, the effectiveness of arbitration still faces several challenges. Some of these include the lack of public understanding of the system, the limited number of arbitrators with sufficient expertise, as well as obstacles in the enforcement of arbitral awards that still require ratification by the district court.

Table 1. Pros and Cons of Resolving Business Disputes Through Arbitration and Formal Courts

Aspects	Arbitration	Formal Justice System
Procedure	Flexible, customizable to the needs of the parties.	Rigid, following the procedures laid down by law.
Confidentiality	The process is conducted in private, keeping business information confidential.	Process open to the public, information can be published.
Completion Time	Relatively fast, depending on the complexity of the dispute.	Tend to more long, through various levels of court.
Cost	Cost Fixed, predictable from the start.	Costs may vary, depending on the length of the process and the level of adjudication.
Decision Quality	Be examined by arbitrators who are experts in the field, relevant to the context of the dispute.	Heard by judges who may not have specialized expertise in the area of the dispute.

Legal Certainty	The decision is final and binding, not subject to appeal.	The verdict can be appealed up to the classification level.

Table. 1 provides the fundamental differences between arbitration and formal court proceedings, particularly in several points, namely confidentiality, time, cost, quality of decisions, and, fundamentally, legal certainty, whereby arbitration awards have the same binding legal force as formal court proceedings in general, but with advantages that are beneficial to the disputing parties.

Arbitration Award Has Binding Legal Force in the Process of Resolving Business Disputes Outside the Judicial System.

BANI is the oldest arbitration institution in Indonesia, established by the Indonesian Chamber of Commerce and Industry (KADIN) in 1977 and domiciled in Jakarta. It was established to provide a forum for non-litigation resolution of business disputes through arbitration.

Referring to the provisions of Article 60 of Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution, it is expressly stated that:

"*The arbitration award is final and has permanent legal force and is binding on the parties.*"

Based on these provisions, it can be concluded that the decision issued by BANI is final and inviolable. This means that this decision is the first and last decision that is binding for the parties, both the applicant and the respondent. Arbitration decisions do not open up opportunities for legal remedies such as resistance, appeal, cassation, or judicial review as known in the general court system. This is intended to prevent protracted dispute resolution, in contrast to the litigation system which allows the continuation of cases up to the classification level.

As a national arbitration institution, BANI has established a standard clause that is usually included in the parties' agreement, which reads:

"*All disputes arising from this agreement will be resolved by BANI in accordance with the applicable arbitration procedures at BANI. The resulting decision is binding and is a decision at the first and final level.*"

Nonetheless, under certain circumstances, an arbitral award may still be annulled if exceptional circumstances are found. This is regulated in Article 70 of the Arbitration Law, which allows for annulment if there are indications that:

1. Documents or evidence used in the trial are found to be false after the verdict is rendered;
2. Important documents hidden by the opposing party were found;
3. Fraud or deceit by one of the parties during the dispute examination process.

One example of a business dispute resolved through the Indonesian National Arbitration Board (BANI) is a business dispute related to a franchise between a bakery and a company engaged in retail and food services. The results of the arbitration decision included granting the petitioner's request in part and declaring the respondents guilty of default. The arbitration award has the force of law which is final and inviolable. However, one of the disputing parties filed a petition for annulment of the arbitration award to the District Court on the basis of the provisions of article 70 of the Arbitration Law, and proceeded to the classification stage. Then at the classification stage, the Supreme Court decision number 941 B/Pdt.Sus-Arbt/2024 decided that the arbitration award was annulled and BANI was not authorized to examine and re-adjudicate the dispute.

From these criteria, it can be concluded that the annulment of an arbitral award is a form of extraordinary legal remedy, different from ordinary legal remedies such as appeals in the formal justice system. Although not explicitly mentioned in the law as a form of legal remedy, due to its compelling nature, annulment cannot be ignored by the disputing parties.

In practice, arbitration is increasingly used by business actors as a fast and efficient conflict resolution solution. This can be proven through data on cases handled by BANI, which since its establishment has handled more than 1,000 cases, mainly related to construction, financing, and trade. This number reflects the high confidence of the business world in the effectiveness of arbitration.

However, the effectiveness of arbitration in Indonesia is not free from challenges that still need to be overcome. Some of the obstacles that often arise include the existence of challenges to arbitral awards by the losing party through the district court, which has the potential to weaken the final and binding nature of the award. In addition, the level of public awareness and understanding of the arbitration mechanism is still low. Therefore, it is necessary to conduct broader education and socialization regarding the benefits, stages, and positive impacts of using arbitration in dispute resolution.

This weakness in arbitration practice is also recognized by the Chairman of the Development Chamber of the Indonesian Supreme Court, Prof. Takdir Rahmadi. In his statement quoted from hukumonline.com, (Pangaribuan, 2024) mentioned that the Indonesian government has adopted various international provisions since the beginning. One of them is the ratification of Law Number 52 of 1968 which regulates the settlement of disputes between the state and foreign investors, which is an adoption of the 1965 ICSID Convention.

Furthermore, Indonesia also ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards through Presidential Decree Number 34 of 1981. This Convention, known as the 1958 New York Convention, provides the basis for the recognition and enforcement of foreign arbitral awards in member states. In addition, another noteworthy international rule is The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, first published in 1976 and revised in 2013 and 2021. These rules regulate the procedures for implementing arbitration in the state party, including cross-border enforcement mechanisms. In Indonesia itself, the Supreme Court has regulated the procedures for enforcing foreign arbitral awards through Supreme Court Regulation No. 1 of 1990, most of whose provisions were adopted in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

For the settlement of sharia-based economic disputes, the Supreme Court has also issued Supreme Court Regulation Number 14 of 2016 which stipulates that the implementation of sharia arbitration decisions is carried out by the Religious Courts.

Another challenge that may be faced in the future is the involvement of third parties in the arbitration process, such as mediators or technical experts. The need for the involvement of these parties is increasing, especially in disputes of a technical and complex nature.

CONCLUSIONS AND RECOMMENDATIONS

Arbitration and formal court systems are two fundamentally different mechanisms for resolving business disputes. Arbitration is known as a fast, flexible, confidential mechanism that produces final and binding decisions, making it ideal for businesses that prioritize efficiency, legal certainty, and protection of corporate reputation. On the other hand, the formal judicial system, despite its strong legitimacy, standardized procedures, and open access, is often perceived as time-consuming, costly, and insufficiently responsive to the dynamic needs of the business world.

In Indonesia, the role of arbitration institutions such as the Indonesian National Arbitration Board (BANI) and the National Sharia Arbitration Board (Basyarnas) is significant, not only for the resolution of domestic business disputes but also for disputes involving cross-border aspects. These institutions provide arbitration procedures that are recognized nationally and internationally, with strengths in independence and flexibility in resolution.

Although the trend of trust in arbitration among business actors continues to increase, various challenges still need to be addressed in its implementation. These include a lack of understanding among the general public and some business actors, a limited number of competent arbitrators in certain fields (such as technology and digital finance), and the ongoing need for exequatur from the district court for the enforcement of arbitration awards.

Therefore, sustained efforts such as education/socialization, training of professional arbitrators, and strengthening of technical regulations are needed to ensure that the arbitration system in Indonesia can operate more optimally and guarantee fairness and efficiency in the resolution of business disputes. This is because the arbitration process can be a win-win solution to protect business actors, particularly in maintaining corporate reputation, thereby promoting inclusiveness in the business world in Indonesia.

ADVANCED RESEARCH

This study has several limitations that need to be noted. The normative legal approach used limits the study to ius constitutum and does not provide an in-depth analysis of the implementation of arbitration in practice. Most of the data comes from legal literature that does not cover the direct experiences of business users of services or arbitration practitioners.

Further research is recommended to explore primary data through case studies on the implementation of arbitration in institutions such as the Indonesian National Arbitration Board (BANI) and interviews with relevant stakeholders to gain more detailed and accurate information for comparing arbitration systems in Indonesia with those in other countries in order to analyze practices that can be adopted.

ACKNOWLEDGMENTS

The authors would like to express their deepest gratitude to all those who have provided moral support and prayers during the process of preparing this research. Special thanks go to the supervisors who have provided direction, constructive input, and meaningful motivation throughout the research process. The authors would also like to thank the institutions and related parties who have provided permission, facilities, and data support in conducting the research. Also, appreciation is given to colleagues who provided advice and encouragement during the process of preparing this scientific work.

REFERENCES

Agustina, R. E. (2024). Effectiveness of Arbitration as Dispute Resolution. *Ethics and Law Journal: Business and Notary*, *2*, 263-272. https://doi.org/10.61292/eljbn.130

Fitrotin Jamilah, S. H. (2018). *Business dispute resolution strategy*. MediaPressindo. https://books.google.co.id/books?id=1wUlEAAAQBAJ&dq=Fitrotin+jamilah,+2014,+Strategi+Penyelesaian+Sengketa+Bisnis,+Yogyakarta:+Medpress+Digital.&lr=&source=gbs_navlinks_s

Gusri Putra Dodi, S. H. M. H. (2022). *Arbitration in the Indonesian Legal System*. Prenada Media. https://books.google.co.id/books?id=Mg-6EAAAQBAJ

Pangaribuan, T. (2024, January 5). *Pluses and Minuses of Arbitration in Perma No.3 Year 2023*. Hukumonline.Com. https://www.hukumonline.com/berita/a/plus-dan-minus-arbitrase-dalam-perma-no3-tahun-2023-lt659789fef3781/

Supena, C. C. (2023). A REVIEW OF THE CONCEPT OF THE INDONESIAN STATE OF LAW BEFORE AND AFTER THE AMENDMENT OF THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA. *Moderat: Scientific Journal of Government Science*, *9*, 372-388. https://doi.org/10.25157/moderat.v9i2.3125

Wajdi, F., Lubis, U. S., & Susanti, D. (2023). *Arbitration Law and Alternative Business Dispute Resolution: supplemented by online arbitration and sharia arbitration* (V. O. Rahmadianti & K. Ahmad, Eds.). Sinar Grafika. https://books.google.co.id/books?id=IXnmEAAAQBAJ

Winarta, F. H. (2022). *Indonesian and International Arbitration Dispute Resolution Law: Second Edition*. Sinar Grafika. https://books.google.co.id/books?id=czFsEAAAQBAJ

Yamin, A. F. (2025). EFFECTIVE STRATEGIES FOR RESOLVING BUSINESS DISPUTES AND THEIR IMPLICATIONS FOR BUSINESS CONTINUITY IN INDONESIA: AN ANALYSIS BASED ON LAW NUMBER 30 OF 1999 CONCERNING ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION. *Meraja Journal*, *7* (Vol 7 No 1 (2024): Vol 7 No 1 (2024)). https://doi.org/https://doi.org/10.33080/mrj.v7i1.330

Zaman, I. F. (2021, July). *INTRODUCTION AND BUSINESS DISPUTE RESOLUTION*. Smart Law; PT. PINTER LAW INDONESIA. https://pinterhukum.or.id/Pengantar-Dan-Penyelesaian-Sengketa-Bisnis/

Indonesia. (1945). *Constitution of the Republic of Indonesia Year 1945*.

Indonesia. (1968). *Law Number 5 of 1968 concerning Settlement of Disputes Between the State and Foreign Nationals Regarding Investment*. State Gazette of the Republic of Indonesia Year 1968 Number 32.

Indonesia. (1981). *Presidential Decree Number 34 of 1981*.

Indonesia. (1999). *Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution*. State Gazette of the Republic of Indonesia Year 1999 Number 138.

Indonesia. (2007). *Law Number 25 Year 2007 on Capital Investment*. State Gazette of the Republic of Indonesia Year 2007 Number 67.

Indonesia. (2016). *Supreme Court Regulation Number 14 of 2016 concerning Procedures for Settling Sharia Economic Cases*.

Indonesia. (2023). *Supreme Court Regulation No. 3 of 2023 on the Manner of Appointment of Arbitrators by the Court, Right of Recusal, Examination of Requests for Enforcement and Limitation of Arbitral Awards*.

Civil Code (Burgerlijk Wetboek). Indonesia.